In the High Court of Punjab and Haryana at Chandigarh

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(1) Criminal Revision No.487 of 2007

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Date of decision:13.3.2007

Yogesh Jain

.....Petitioner

v.

Rajesh Kumar Mittal and another

.....Respondents

....

(2) Criminal Revision No.488 of 2007

.....

Yogesh Jain

.....Petitioner

v.

Rajesh Kumar Mittal and another

.....Respondents

....

Present: Ms. Poonam R. Mehta, Advocate for the petitioner.

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S.S. Saron, J.

This order will dispose of Criminal Revision Nos.487 and 488 of 2007 as they are between the same parties and contain identical facts. In both the revisions petitions two separate orders dated 23.1.2007 passed in Criminal Complaint No.202/2 of 6.12.2000 and Criminal Complaint No.203/2 of 6.12.2000 have been assailed. In terms of the said orders two

separate applications filed by the accused-petitioner in each of the case under Section 311 of the Code of Criminal Procedure (`Cr.P.C.' – for short) for recalling Rajesh Kumar Mittal (respondent No.1) along with cash book of the Bank and income tax records for the assessment year 2001-02 for the purpose of his cross-examination and for permission to summon the record of the Income Tax Department relating to the complainant-respondent No.1 for the assessment year 2001-02 has been declined.

Respondent No.1 Rajesh Kumar Mittal filed two separate complaints i.e. Criminal Complaint No.202/02 of 6.12.2000 and 203/2 of 6.12.2000 under Section 138 of the Negotiable Instruments Act, 1881 (`NI' – for short). The said complaints have been filed against the petitioner who is respondent No.2 before the learned trial Magistrate. The copies of the complaints dated 5.12.2000 have been annexed as Annexure-P.1 with the respective petitions. In Criminal Complaint No.202/02 of 2000, it is alleged by the complainant-respondent No.1 that he had given a loan of Rs.1 Lac to the respondents in the complaint pending before the learned trial Magistrate. The petitioner on behalf of the firm had issued a cheque No.670627 dated 8.11.2000 which was dishonoured by the banker of the petitioner on the ground of `insufficient funds'. In Criminal Complaint No.203/02 of 2000, the complainant-respondent No.1 had alleged that he had given a loan of Rs.1,50,000/- to the respondents in the complaint pending before the learned trial Magistrate. The petitioner on behalf of the firm had issued a cheque bearing No.093692 dated 7.11.2000 which was dishonoured by the banker of the petitioner on the ground of `insufficient funds'. The proceedings under Section 138 of the NI Act in both the

criminal complaints are pending before the learned Additional Chief Judicial Magistrate, Ludhiana. It is the case of the petitioner that since the inception of the proceedings, the petitioner has been disputing the respective transactions in both the cases. According to him the complainant-respondent No.1 never lent any money to the petitioner or the other respondents in the complaint pending before the learned trial Court. It is stated that though the petitioner had requested complainant-respondent No.1 to lend him some money, he obtained post-dated cheques from the petitioner as security against the proposed lending. In fact, the complainant-respondent No.1 never lent any money to the petitioner and backed out from his promise. Thereafter, a dispute arose between the petitioner and the complainant-respondent No.1 on account of which the latter got infuriated and misused the cheques. The respondents in the complaint pending before the trial Court were in need of money and, therefore, had been maintaining a low bank balance account. As such, when the cheques that were taken by the complainant-respondent No.1 were presented for encashment they were returned back by the bankers of the petitioner on the ground of `insufficient funds'. The stand of the complainant-respondent No.1 with regard to the impugned transactions, it is stated by the petitioner, is altogether contradictory. A reference has been made to the statement of complainant-respondent No.1 during the course of trial. A perusal of the said statement, according to the petitioner, reveals that the stand of complainant-respondent No.1 with regard to the impugned transaction stands falsified and that respondent No.1 could not lend a huge amounts of Rs.1 Lac in one case and Rs.1.5 Lac in the connected case to a

firm with which he does not have any dealings. In order to show the falsity of the allegations the petitioner filed an application under Section 311 Cr.P.C. seeking production of the cash book of bank and income tax record for the assessment year 2001-02 of respondent No.1. This was sought in order to prove that in fact no money was ever lent by respondent No.1 to the petitioner or the other respondents in the complaint pending before the learned trial Court. The applications of the petitioner having been dismissed by the learned trial Court, he has approached this Court for setting aside the impugned orders and allowing the applications filed by him.

Learned counsel appearing for the petitioner submits that the impugned orders in the two cases are liable to be set aside as the records sought to be produced and the re-examination of respondent No.1 is absolutely necessary for the proper disposal of the case. It is contended that the Court has ample power under Section 311 Cr.P.C. for summoning, examining, recalling or re-examining any person if it appears to be essential for the just decision of the case. On an earlier occasion, it is contended that the learned trial Court had allowed an application under Section 254(2) Cr.P.C. filed by respondent No.1 for producing and proving alleged acknowledgement-cum-receipt executed by the petitioner at the time of taking loan on the ground that the receipt was very material for the proper adjudication of the case. Therefore, the applications of the petitioner are also liable to be allowed.

After giving my thoughtful consideration to the contentions of the learned counsel for the petitioner, I find no merit in the same. The case

set-up by the petitioner primarily is that there is no liability against him towards the complainant. The petitioner, therefore, never issued any cheque so as to discharge his legal liability. The cheques in question according to the petitioner had been misused by the complainant in a surreptitious manner. The position, however, as on record is that the complainant-respondent No.1 had closed his evidence on 7.4.2004. Thereafter, the case was fixed for recording the statement of the accused in terms of Section 313 Cr.P.C. for 26.4.2004. The statement of the accused was recorded on the said date. It has been observed by the learned trial Court that thereafter the process of filing applications started and till date three applications have been filed. The petitioner had also taken at least four adjournments for leading his defence evidence. Thereafter, the petitioner filed an application under Section 220 Cr.P.C. which was also disposed. Then he took at least 12 adjournments but he failed to conclude his evidence. His evidence was closed by order on 8.11.2006. Thereafter, the petitioner was ready to advance his arguments on 20.11.2006 but he took an adjournment. The case was adjourned for 22.11.2006 on which date the applications under Section 311 Cr.P.C. were filed. These circumstances, according to the learned trial Court, show that the accused were not interested in leading evidence and rather were keen on delaying the proceedings. It was also noticed that the complainant was examined in this case on 7.4.2004 and he was thoroughly cross-examined by the learned defence counsel. No suggestion was put to the complainant that the petitioner had approached the complainant for advancing loan and that the complainant agreed to advance the loan on furnishing security by way of a post-dated cheque by

the petitioner. It was also not put to the complainant that when he did not advance the loan as promised, the cheque was misused to cause harassment to the petitioner. The learned trial Magistrate was satisfied that the story had been concocted to delay the proceedings. In the facts and circumstances of the case the record which has been summoned i.e. the income tax record of 2001-02 in respect of the complainant-respondent No.1 and the re-examination of respondent No.1 is not at all necessary for the just decision of the case. Once the conclusion is reached that the evidence sought to be produced is not necessary for the disposal of the case, it is not necessary to allow the application to lead evidence that has been sought to be adduced by way of additional evidence. The learned trial Court has recorded sound reasons for declining the application of the petitioner which would not warrant any interference by this Court in exercise of its jurisdiction under Section 482 Cr.P.C.

For the foregoing reasons, there is no merit in these petitions and the same are accordingly dismissed.

March 13, 2007. **(S.S. Saron)**
Judge

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